REMARKS

Claims 1-3, 5-6, 12-17, 19-21, 28-30, 45-48, 50, 51, 53, 55, 57, 59-61, 63 and 64 are pending in the application.

Claims 1-3, 5, 6, 12-17, 19-21, 28-30, 45-58, 50, 51, 53, 55, 57, 59-61, 63 and 64 have been rejected.

Claims 1, 12, 15, 28, 45, 48, 50, 51, 53, 55, 57, 60, 61, and 64 have been amended. Support for these amendments can be found throughout the originally filed application. For example, support can be found in lines 9-20 of page 17 of the specification.

Claims 65-71 have been added. Support for these claims can be found throughout the originally filed application. For example, support can be found in lines 12-16 of page 13 of the specification.

Rejection of Claims under 35 U.S.C. § 103

Claims 1-3, 5, 6, 12-17, 19-21, 28-30, 45-58, 50-51, 53, 55, 57, 59-61 and 63-64 stand rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over U.S. Patent No. 6,804,657 issued to Sultan ("Sultan"), in view of Official Notice, and in view of U.S. Patent No. 6,078,893 issued to Ouimet et al. ("Ouimet"). *See* Office Action, p. 4. Applicants respectfully traverse this rejection.

The Sultan-Official Notice-Ouimet Combination Does Not Teach the Claimed Forecast Series

Independent claims 1, 12, 15, 28, 45, 48, and 50 each recite a forecast series (e.g., "a forecast series associated with the forecast series creation set of instructions comprises a set of parameters that define attributes of forecasts that are created from the forecast series . . ."). As discussed previously by Applicants (*see* Response to Non-Final Office Action, dated September 29, 2008, pp. 15-17), and conceded by the Office Action, Sultan fails to teach or suggest a forecast series. *See* Office Action, pp. 8, 14, and 24. In order to supplement this deficient disclosure, the Office Action relies instead upon an Official Notice that "it was old and well-known in the art of simulation software at the time of Applicant's invention to pre-store common scenarios as a base for further analysis." *See*

id. The Office Action asserts that this Official Notice is supported by Ouimet. *See id.* Applicants respectfully submit that the Sultan-Official Notice-Ouimet combination not only fails to teach or suggest the claimed forecast series, but the combination also fails to teach or suggest the existence or idea of the claimed forecast series. This conclusion follows even if it is assumed that a forecast series is a "common scenario" (a proposition which Applicants do not necessarily concede).

First, the Official Notice and Ouimet fail to teach or suggest the claimed forecast series, even when combined with Sultan, since they fail to teach or suggest a forecast series comprising the claimed set of parameters. For example, there is no disclosure in either the Official Notice (as given above) or Ouimet related to the creation of a forecast series comprising a set of parameters identifying members of an organization to be included in forecasts, as recited in independent claims 1, 12, 15, 28, 45, 48, and 50. In fact, the cited sections of Ouimet concern consumer demand and market models and do not even mention the members of any organization. Even if the Sultan-Official Notice-Ouimet combination suggests that some data ought to be pre-stored as a "common scenario" (an assumption Applicants do not endorse), it does not follow that the claimed set of parameters ought to be included in that data. Thus, the Sultan-Official Notice-Ouimet combination fails to teach or suggest the particular forecast series recited in claims 1, 12, 15, 28, 45, and 50.

Second, the Sultan-Official Notice-Ouimet combination does not disclose the creation of a forecast series comprising the specific information of the claimed forecasts. The Office Notice refers only generally to "common scenarios" without specifically indicating the information they should include. Further, the cited sections of Ouimet at best teach storing predefined demand models of the form $q = q(\{X\};\{D\})$, where "$\{D\}$ are the set of demand parameters and $\{X\}$ is the set of all variables for all items." Ouimet 5:51-68. Conversely, the claims provide for a forecast series containing a set of parameters that identify hierarchy data, an acceptable range of dates over which forecasts generated from the forecast series cover, members of the organization to be included in the forecasts, forecast data to be automatically analyzed, a visibility mode, etc. Since the Sultan-Official Notice-Ouimet combination fails to suggest any of this specific information in a forecast series, the Sultan-Official Notice-Ouimet combination cannot be said to teach or suggest any forecast series, let alone the claimed forecast series.

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Applicants respectfully submit that any proposition that the Sultan-Official Notice-Ouimet combination teaches or suggests either the particular forecast series recited in claims 1, 12, 15, 28, 45, 48, and 50 or the idea of a forecast series can only be suggested using impermissible hindsight. *See* MPEP § 2142. Only by using the present Application's concept of a forecast series could the combination of that with the Official Notice possibly suggest pre-storing the forecast series as a base for further analysis (assuming that forecast series can be considered "common scenarios," to which Applicants do not necessarily concede). The combination of the Official Notice and Ouimet with Sultan, as presented in the Office Action, is incapable of suggesting the invention of any particular forecast series in the first place.

Thus, for at least the reason that the Sultan-Official Notice-Ouimet combination fails to teach either the claimed forecast series or even the idea of a forecast series, Applicants respectfully request the reconsideration and withdrawal of the final rejection against independent claims 1, 12, 15, 28, 45, 48, and 50, and an indication of the allowability of the same.

Ouimet Fails to Support the Official Notice

In addition, Applicants submit that Ouimet fails to support the Official Notice discussed above. The Office Action asserts that Ouimet supports the Official Notice since "Ouimet allows a user to select from existing, predefined demand models and market models or create new ones." *See* Office Action, pp. 8, 14, and 24 (citing Ouimet 4:40-65, and 5:35-6:61). But the broadest conclusion supportable by the Office Action's characterization of Ouimet would be that it was old to pre-store predefined demand models and market models. Ouimet cannot support the much more broad assertion of the Official Notice that it was old and well-known in the art of simulation software to pre-store common scenarios as a base for further analysis.

Not all common scenarios are demand models or market models. In order to support the assertion of the Official Notice, the Office Action would at least need to provide a reference, such as a treatise on simulation software, that indicates that the pre-storage of common scenarios as a base for further analysis has been a design element of such software. *See* MPEP 2144.03(A) ("assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by

citation to some <u>reference work</u> <u>recognized as standard</u> in the pertinent art")(emphasis added).

Applicants submit that in using Ouimet to support an over broad Official Notice the Office Action has mischaracterized Ouimet to cover subject matter not contained within that reference. The Office Action resorts to this faulty Official Notice approach because Ouimet itself could not be used in any rejection to demonstrate the purported obviousness of the claimed forecast series. As stated above, the cited sections of Ouimet at best teach storing predefined demand models of the form $q = q(\{X\};\{D\})$. They do not teach a forecast series, and they do not teach a forecast series comprising the parameters respectively recited in the independent claims.

Thus, for at least the additional reason that Ouimet fails to support the Official Notice, Applicants respectfully request the reconsideration and withdrawal of the final rejection against these claims 1, 12, 15, 28, 45, 48, and 50 as well as their respective dependent claims, and an indication of the allowability of the same.

Applicants note that in making this argument, they do not concede that the recited claims are in any way related to whatever it is exactly that the Office Action intends to count as "simulation software."

Dependent Claims 3 and 17

Applicants respectfully reiterate their position that the cited sections of Sultan fail to teach the limitation of claims 3 and 17 requiring that the visibility rules include a maximum hierarchy depth search value n. The Office Action asserts that Sultan teaches this limitation, paraphrasing Sultan 7:5-64 as purportedly teaching that

> Sales Manager position B11 should have access to the pipeline and forecast sales information entered and or modified by his or her hierarchically-lower Account Supervisors B111, B112 and B113 and entered by those Account representatives (e.g., B1121-B1125, among others) that report to him. However, the Sales Manager B11 may have no reason to access either pipeline or forecast information from Sales Managers B12, B13 (even though B12 and B13 belong to the same Division as B11) or that of any other Sales Manager or any hierarchically higher Regional manager, Division Head or CEO. To restrict access to the pipeline and/or forecast information, the assigned permission levels are used. In general, the permission levels for accessing pipeline and/or forecast information matches a sales force member's hierarchical position with the sales organization, unless such sales force member belongs to an "overlay organization" that participates in the opportunity and has permission to add information to it, but does not "own" the corresponding forecast.

Office Action, pp. 7-8. The Office Action further asserts that "[t]he maximum depth as indicated by this rule would equal the total number of levels below the member with respect to hierarchy." *See* Office Action, p. 8 and 22-23. Thus, the Office Action asserts that since Sultan purportedly teaches accessing all the levels below a member, with respect to a hierarchy, it follows that Sultan teaches that visibility rules include a maximum hierarchy depth search value n.

But even if Sultan teaches accessing all the levels of a hierarchy below a member, it does not follow that Sultan necessarily teaches that visibility rules include a maximum hierarchy depth search value n. There is no explicit disclosure in Sultan that Sultan's "permission levels" include the claimed "maximum hierarchy depth search value n," nor is there any support for a claim that this is necessarily taught. Whatever rules are followed by Sultan, none of them necessarily include, or make reference to, a maximum hierarchy depth search value, n, in order to provide access to all the levels below a given member. The rules could, for example, simply engage a recursive algorithm that accesses each level in turn until there are no more levels to access. Thus, there is no inherent teaching of any set of rules including the claimed maximum hierarchy depth search value.

In response to the above argument, the Advisory Action dated March 2, 2009 asserts that since "the claim does not explain how n is set," it follows that "the number of levels below [Sultan's] manager corresponds to [the claimed] n." Thus, the Advisory Action sets forth a theory of inherency to find a teaching of the claimed hierarchy depth search value. But none of Sultan's rules need <u>necessarily</u> include, or make reference to, a maximum hierarchy depth search value. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is <u>necessarily</u> present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" MPEP § 2112 (emphasis added). "Inherency . . . may not be established by probabilities or possibilities" and "[t]he mere fact that a certain thing may result from a given set of circumstances is not sufficient [to establish inherency]." *Id.* Thus, Sultan cannot support a theory of inherency and the Advisory Action fails to present any argument to the contrary.

For at least the reason that the cited sections of Sultan fail to teach the limitation of claims 3 and 17 requiring that the visibility rules include a maximum hierarchy depth search value n, Applicants respectfully submit that the Sultan-Official Notice-Ouimet

combination fails to teach these limitations. Therefore, Applicants request the reconsideration and withdrawal of the final rejection against these claims, and an indication of the allowability of the same.

Claims 51, 53, 55, 57, 60, and 64

In addition, claims 51, 53, 55, 57, 60, and 64 have been amended to recite a maximum hierarchy depth search value similar to claims 3 and 17. Claims 51, 53, 55, 57, 60, and 64 further include a limitation providing at least one level in a hierarchy that is below the last level included in a search scope. Thus, Applicants submit that the rejection offered against claims 3 and 17 does not apply to these claims.

As stated above, the Office Action asserts that "[t]he maximum [search] depth as indicated by [Sultan's purported] rule would equal the total number of levels below the member with respect to hierarchy" (emphasis added). Thus, the Sultan-Official Notice-Ouimet combination cannot teach that there is at least one level in a hierarchy that is below the last level included in a search scope, as claimed.

For at least this reason, Applicants respectfully submit that the cited combination fails to provide disclosure of the amended limitations of claims 51, 53, 55, 57, 60, and 64 and that these claims are in condition for allowance. Applicants therefore respectfully request an indication of the allowability of claims 51, 53, 55, 57, 60, and 64.

New Claims 65-71

Applicants have added new claims 65-71, containing limitations directed toward a forecast series "further comprising a field indicating whether the forecast series is available for forecasting purposes." Since neither the cited sections of Sultan, the cited sections of Ouimet, the Official Notice discussed above, or any other Official Notice taken by the Office Action teach or suggest such a field, Applicants submit that these claims are allowable.

Applicants recognize that the Office Action has taken Official Notice that "it was old and well-known in the art to warn a user when data is no longer valid (based on user input)." *See, e.g.*, Office Action, p. 9. But even if this Official Notice is correct, Applicants respectfully submit that the Office Action fails to teach or suggest the claimed field. There are a variety of ways in which a user can be warned that data is no longer valid, based on user input. For example, the origination date of the data could be entered

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by a user and used to determine the validity of the data, or the existence of new data entered by a user could signal the invalidity of previous data. Thus, even if "it was old and well-known in the art to warn a user when data is no longer valid (based on user input)," it does not follow that a forecast series should further comprise a field indicating whether the forecast series is available for forecasting purposes.

In addition, since the Official Notice vaguely refers to "the art," without specifically identifying that art, it cannot be the case that "the facts asserted [by the Official Notice] to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known," as required by law. *See* MPEP 2144.03(A). It is impossible to instantly or unquestionably demonstrate anything about an unspecified area of technology. Thus, Applicants respectfully submit that the taking of this Official Notice was inappropriate. *Id.* ("[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.").

For at least these reasons, Applicants submit that the cited combination of references fails to provide disclosure of the limitations of claims 65-71 and that these claims are in condition for allowance. Applicants therefore respectfully request the Examiner's notification of the allowability of same.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5090.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

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